



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of Claims Against the Dealer Bond

of Dodgeland of Wisconsin, Inc

Case No. 98-H-1113

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**FINAL DECISION**

On November 11, 1998, Lawrence Heitkemper filed a claim With the Wisconsin Department of Transportation against the motor vehicle dealer bond of Dodgeland of Wisconsin, Inc. The claim along with documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals for hearing. The Administrative Law Judge gave the parties until February 5, 1999, to file any additional information they wished to have considered in issuing a preliminary determination in this matter. No additional information was filed. The Administrative Law Judge issued a Preliminary Determination on March 22, 1999. No objections to the Preliminary Determination were received. Pursuant to sec. Trans 140.26(5)(d), Wis. Adm. Code, the Preliminary Determination is adopted as the final decision of the Department of Transportation.

Findings of Fact

1. Dodgeland of Wisconsin, Inc., (Dodgeland or dealer) is a motor vehicle dealer licensed by the Wisconsin Department of Transportation pursuant to sec. 218.01, Stats. Dodgeland's dealership facilities are located at 6319 South 108<sup>th</sup> Street, Franklin, Wisconsin.

2. Dodgeland has had a bond in force from April 28, 1995, to the present date (Bond #587372 from Capitol Indemnity Corporation, Madison, Wisconsin). The most recent bonding period runs from April 28, 1998, to April 28, 1999.

3. On May 28, 1998, Lawrence Heitkemper purchased a 1991 Ford F250 pickup truck, Vehicle Identification Number 1FTEF26N7MLA05042, from the dealer.

4. Mr. Heitkemper purchased the vehicle "AS IS" from the dealer. On the Wisconsin Buyer Guide the dealer disclosed abnormal engine noise and that the exhaust manifold was cracked.

5. On the Wisconsin Buyer Guide the dealer checked "Personal Use" in the section of the guide for vehicle history. However, the vehicle was previously titled to Good Tree and

Landscape Service. In response to an inquiry from an investigator for the Wisconsin Department of Transportation, the previous owner of the vehicle indicated that among other activities, the vehicle was used for snowplowing. Based on this information the proper disclosure for this vehicle's history should have been "Business Use."

6 The correct vehicle history was obvious from the title and the fact that the vehicle was traded in with a snowplow. The dealer's failure to disclose the vehicle's history as "Business Use" constitutes a violation of sec. Trans 139.04(6), Wis. Adm. Code. A violation of this administrative rule is in turn a violation of sec. 218.01(3)(a)4 and/or 14, Stats.

7. After Mr. Heitkemper purchased the vehicle on May 28, 1998, he drove the vehicle off the dealer's lot. After driving the vehicle approximately five miles, the speedometer stopped working and the left front brake pad broke. Mr. Heitkemper also reported that on the same day the "lights wouldn't work."

8. Mr. Heitkemper took the vehicle back to the dealer and the dealer repaired the speedometer, brakes and lights. However, Mr. Heitkemper alleges that the dealer did not fix or replace a bad brake rotor.

9. Mr. Heitkemper subsequently learned that the vehicle had several other defects that were not disclosed on the Wisconsin Buyer Guide. These defects include an oil leak, a loose steering gear box, and the engine idling improperly.

10. Mr. Heitkemper filed a bond claim with the Department of Transportation on November 11, 1998, alleging a loss of \$3,721.09.

11. Mr. Heitkemper does not indicate what he was told about the vehicle's history. Presumably, he was aware that the vehicle was used for snowplowing since it apparently was sold with a snowplow. However, the snowplow could have been for limited personal use as opposed to extensive commercial use. It is likely that Mr. Heitkemper would not have purchased the vehicle if it had been disclosed to him that the vehicle had a history of "Business Use." Obviously, Mr. Heitkemper would not have experienced any of the losses he has sustained if he had not purchased the vehicle. Accordingly, Mr. Heitkemper's losses were caused by the dealer's violation of sec. 218.01(3)(a)4 and/or 14, Stats.

12 It is not clear how Mr. Heitkemper arrived at his claim amount of \$3,271.09. Of the copies of receipts and estimates forwarded with the file from the Department of Transportation, some are indecipherable and some appear to be duplicative. Presumably, these receipts and estimates were submitted by Mr. Heitkemper to the Department of Transportation. Based on these records, it appears Mr. Heitkemper has paid W. J. Kuhn Automotive Center a total of \$470.17 to check and align the vehicle's front suspension, to adjust the steering gear box and front wheel bearings, and to replace both front outer axle U-joints. Mr. Heitkemper has also paid Venus Ford a total of \$303.87 to replace the starter and for other work performed on the engine (described on the invoice as "R&R T.Body and REPLC. TPS"). Mr. Heitkemper submitted an estimate from Venus Ford in the amount of \$1310.49 to replace the oil pan and gasket and to repair the rear differential movement. The total of these amounts is \$2084.53.

As mentioned above, the other receipts and estimates are either indecipherable or appear to be duplicative. In his bond claim, Mr. Heitkemper lists as amounts he has already paid the following: \$26.33 for a muffler and parts, but there is no receipt for these parts, \$85.00 for a starter (possibly, the starter installed by Venus Ford) but no receipt for a starter costing \$85.00, and \$485.72 for four tires. With respect to the tires, not only is there no receipt for the tires but no indication that the need to replace the tires was in any way related to the other problems with the vehicle.

13. The claim was filed within three years of the ending date of the one-year period the Capitol Indemnity Corporation bond was in effect from April 28, 1998 to the present

### Discussion

The procedure for determining claims against dealer bonds is set forth at Chapter Trans 140, Subchapter II, Wis. Adm. Code. Sec Trans 140 21(1), Wis. Adm Code, provides in relevant part

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the claimant's agents or employees, which is grounds for suspension or revocation of any of the following:

1 A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01 (3) (a) 1. to 14 , 18. to 21 , 25. or 27 to 31., Stats

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

In a letter dated October 9, 1998, addressed to the Department of Transportation investigator, the dealer argues that Mr. Heitkemper purchased the vehicle "as is" with no warranty implied. In the letter, the dealer further indicates that "the vehicle was safety inspected, and all problems were disclosed in the State of Wisconsin prescribed manner." There is no evidence in the record that the dealer failed to properly inspect the vehicle or to disclose any problems with the vehicle that were discoverable with reasonable care. However, as found, the dealer did fail to accurately disclose the vehicle's use history. It can be argued that the vehicle's

use history was obvious from its appearance; however, the purpose of the Wisconsin Buyer Guide written disclosures is to ensure that there is no ambiguity or opportunity for any misunderstanding with respect to the disclosures dealers are required to make to retail customers.

In this case, the dealer disclosed the vehicle's use history as "Personal" when it should have been "Business." The dealer may consider that disclosure violation insignificant; however, it is likely that if Mr. Heitkemper had known the vehicle had been used for business and, therefore, presumably, had experienced more wear and tear than if it had only had personal use, he would not have purchased the vehicle. Alternatively, if he had been aware of the vehicle's history, Mr. Heitkemper may have still decided to have purchased the vehicle but would have either negotiated a lower price for the vehicle or had the vehicle's condition checked by his own mechanic prior to purchasing it. Any of these alternatives would have avoided his current dissatisfaction with the vehicle.

Accordingly, it is reasonable to find that Mr. Heitkemper's losses were caused by the disclosure violation committed by the dealer. A claim in the amount of \$2084.53 is approved. In approving a claim in this amount, it is acknowledged that this will not cover all the repairs apparently needed for this vehicle. On the other hand, Mr. Heitkemper purchased a seven year old vehicle with 98,892 miles on it. Mr. Heitkemper purchased the vehicle "AS IS" with no warranty. It is unreasonable for him to expect that the vehicle will be in perfect running condition. If the dealer had properly disclosed the vehicle's use history, no claim would have been approved. However, because the dealer did fail to properly disclose the vehicle's history, Mr. Heitkemper was unaware of its business use and he is entitled to some compensation for the cost of the necessary repairs to the vehicle.

#### CONCLUSIONS OF LAW

1. Lawrence Heitkemper's claim arose on May 28, 1998, the date he purchased the subject vehicle from Dodgeland of Wisconsin, Inc. The surety bond issued to Dodgeland of Wisconsin, Inc., by Capitol Indemnity Corporation covers a one-year period commencing on May 28, 1998. The claim arose during the period covered by the surety bond.
2. Mr. Heitkemper filed a claim against the motor vehicle dealer bond of Dodgeland of Wisconsin, Inc., on November 11, 1998. The bond claim was filed within three years of the last day of the period covered by the surety bond; therefore, pursuant to sec. Trans 140.21(1)(d), Wis. Adm. Code, the claim is timely.
3. Mr. Heitkemper's loss was caused by an act of Dodgeland of Wisconsin, Inc., which would be grounds for suspension or revocation of its motor vehicle dealer license. Mr. Heitkemper has submitted documentation to support a claim in the amount of \$2084.53. Pursuant to sec. Trans 140.21(1)(c), Wis. Adm. Code, this portion of the claim is allowable.
4. The Division of Hearings and Appeals has authority to issue the following order.

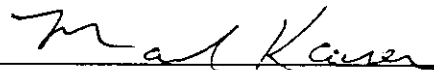
ORDER

The claim filed by Lawrence Heitkemper against the motor vehicle dealer bond of Dodgeland of Wisconsin, Inc., is APPROVED in the amount of \$2084 53. Capitol Indemnity Corporation shall pay Mr. Heitkemper this amount for his loss attributable to the actions of Dodgeland of Wisconsin, Inc.

Dated at Madison, Wisconsin on April 23, 1999.

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By



MARK J. KAISER  
ADMINISTRATIVE LAW JUDGE